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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 February 1992, at 10 a.m.

Chairman: Mr. SOLT (Hungary)

later: Mr. ENNACEUR (Tunisia)

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Statement by the Chairman of the Executive Committee of the Palestine Liberation Organization

Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment

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Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-third session

The meeting was called to order at 10.15 a.m.

STATEMENT BY THE CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE PALESTINE LIBERATION ORGANIZATION

1. The CHAIRMAN welcomed the Chairman of the Executive Committee of the Palestine Liberation Organization and invited him to address the Commission.

2. Mr. ARAFAT (Palestine Liberation Organization) said that, at a time when the colonialist era had, to a large extent, drawn to a close, the issue of human rights had become the symbol of the new world order. While the principles of justice and the rule of law prevailed in many parts of the globe, there were still certain peoples and nations, deprived of their basic rights, which were struggling for independence and freedom.

3. The Commission on Human Rights, which sought to achieve the implementation of the principles of international law, had become the conscience of humanity. Since the beginning of its mandate, it had cast its lot with those resisting racist and colonialist regimes, promoting self-determination, independence and the national sovereignty of peoples. In an age in which the noble principles on which the United Nations had been founded were triumphing, there could be no justification for continued deprivation of certain people's right to self-determination. The history of the struggle for the liberation of peoples was replete with examples showing that outside forces had often attempted to impose their will through military, economic or diplomatic pressure to further their regional and global interests.

4. The people of South Africa was pursuing its long struggle for self-determination, which made it a living example for peoples yearning for freedom and independence. The reforms carried out in South Africa still fell short of fulfilling the aspirations of the people for self-determination and basic freedoms. The racist regime was tightening its grip on the overwhelming majority of the South African people, thus perpetuating the tragedy of apartheid, which the international community, calling for its abolition, had condemned as a crime against humanity.

5. The Middle East region had been a powder-keg since the close of the First World War, when the Palestinian people had been denied its right to self-determination by the onset of the British Mandate, established over Palestine in 1922 in order to put into effect the Balfour Declaration. That had been the start of the process of the forcible immigration of Jews into Palestine under the Mandate Government which had later led to the declaration of the establishment of the State of Israel in 1948. In 1967, Israeli expansionism had resulted in the occupation of all of Palestine, of the Syrian Golan Heights and Sinai, and of southern Lebanon in 1978 and Beirut in 1982.

6. Current oppressive Israeli practices included murder, confiscation of land, deportations, expulsion of the population and desecration of holy places, the aim being to steal the land and to replace its rightful owners with Jewish immigrants from all over the world so as to undermine the search for a just solution based on the principles of human rights and the right to self-determination.

7. That had made the Middle East a hotbed of tension and a threat to international peace and security. In only five decades, the region had lived through six wars, some of which had threatened to spread beyond the Middle East. Indeed, the most recent war in the region could be described as having had a limited international character.

8. The Palestinian people continued to be denied its rights, a situation which had invariably been the direct cause of past conflicts and boded ill for the future. Yet the forces that dominated the current international situation continued to ignore the plight of the Palestinians. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories had been in existence for more than 20 years but, as usual in its dealings with the United Nations and its specialized agencies, Israel refused to cooperate with that Committee.

9. At its twenty-sixth session, the Commission had expressed dismay at Israel's refusal to cooperate with the forerunner of the Special Committee. At the same session, it had condemned the Israeli occupation authorities for violating the principles of human rights and the provisions of the Fourth Geneva Convention and for its refusal to commit itself to implementing them. In view of Israel's continued insistence on violating the principles of international law and the provisions of the Fourth Geneva Convention, the Commission had discussed the question of Israel's violations of human rights at all its subsequent sessions and had repeatedly condemned that country, which had so far not put an end to those violations.

10. On the contrary, Israel had converted those violations into a firm policy against the Palestinian people. Under that policy, known as the "iron-fist and breaking-bones" policy, Israel had committed all kinds of murder, had practised torture, had built concentration camps, had imposed collective punishment, had expelled the inhabitants from their homes, had deported them from their homeland, and, under various pretexts, had seized land amounting to 65 per cent of the total area of the West Bank, the Gaza Strip and Jerusalem. Furthermore, Israel was establishing illegal settlements, bringing in illegal Jewish immigrants to settle them on the occupied lands, committing aggressions against Islamic and Christian holy places, and perpetrating massacres, including that committed within the precincts of the Holy Al-Aqsa Mosque in Jerusalem, thus violating the Fourth Geneva Convention, the principles of international law and the relevant United Nations resolutions.

11. Israel had adopted a permanent pattern of grave violations of the human rights of the Palestinian people. That pattern had prompted the Commission to consider those violations of the Fourth Geneva Convention in the occupied territories to be crimes of war and an affront to humanity. That was expressed by the Commission in its resolution 3 (XXVIII) of 1972, adopted on the basis of the Charter and the judgements of the International Military Court in Nürnberg, and reaffirmed in relevant United Nations resolutions.

12. In view of Israel's refusal to abide by its international commitments, its rejection of the resolutions of the Commission and those of other United Nations organs, including the Security Council, and its continued

perpetration of crimes, the Commission had reaffirmed in resolution 2/1989 that Israel was committing war crimes, crimes against peace and crimes against the Palestinian people and had reiterated its condemnation thereof.

13. In its capacity as occupying Power, Israel refused to cooperate with the Commission and to apply the provisions of the Fourth Geneva Convention in the Palestinian and Arab territories it had occupied by military force since 1967. It continued to occupy by military force the Palestinian lands and Arab lands in the Syrian Golan Heights and southern Lebanon and to establish settlements there. In international law the occupation represented as such a flagrant violation of human rights and a crime which threatened the peace and security of humanity.

14. It was an occupation which had turned his people in the occupied territories into defenceless unarmed hostages at the mercy of an occupation whose army, security apparatus and armed units of new settlers were under no control and behaved according to whim without any deterrence or fear of retribution from any quarter. They were encouraged in those practices by the unlimited financial, political, military and diplomatic support which Israel received from the United States and some European countries.

15. Faced with that deteriorating situation, the international community had not succeeded in ending the Israeli occupation and in forcing its will on the occupying Power, to compel its compliance with the provisions of the relevant international conventions and United Nations resolutions. The international community was, however, under an obligation to provide international protection for his people under Israeli occupation until that occupation was brought to an end and Israel withdrew its armed forces. In that connection, he expressed appreciation of the request made by the Commission that international protection be provided for his people, a request supported by Security Council resolution 681 (1990).

16. Nevertheless, the situation prevailing in the occupied territories was one of escalating danger, owing to the orders issued by the occupation authorities which allowed the army, security forces and armed settlers to shoot with live ammunition at the Palestinians and even to use internationally prohibited chemical bombs, pretending that they were tear-gas bombs, a fact brought to light by United States and Belgian medical teams.

17. The international community was urgently requested - an urgency necessitated by its commitment to humane international law - to act effectively so as to provide without delay international protection for his people under Israeli occupation.

18. Exercising their legitimate rights in accordance with international legality and United Nations resolutions, the people of Palestine had rejected Israel's military occupation of their homeland and holy places. They had launched a valiant struggle against that occupation. Their resistance to Israeli occupation had gained momentum and culminated in an overwhelming popular uprising, the intifada, in the occupied territories in 1987. The entire world had witnessed his people's determination to reject the Israeli

fascist occupation and their support for their leadership, the PLO, which was the symbol of their resistance, their sole legitimate representative and the organization giving expression to their aspirations, rights and national hopes.

19. That great popular uprising would continue until the termination of the Israeli occupation and until his people were enabled to exercise their absolute right to self-determination and total sovereignty over their national territory in an independent Palestinian State, no matter what the sacrifice. His people had resolved to live free and sovereign on their own land. It was the right of his people - who numbered more than six and a half million - to live in security, harmony and freedom like all other peoples of the world.

20. Unfortunately, the Israeli occupation forces were continuing to commit crimes, to commit aggression and oppression, using all criminal means to kill children, cause Palestinian women to have miscarriages and generally engage in murder until they had reached the level of carrying out massacres and building concentration camps that resembled the Nazi concentration camps of the Second World War.

21. In the intifada uprising, more than 2,000 martyrs had died and over 120,000 had been wounded, 40 per cent of whom were under 16 years of age. In addition, more than 98,000 had been detained in prisons and detention centres and were being held there under false and arbitrary accusations, pretexts and military decisions.

22. All that had been confirmed and condemned by the Commission in many of its resolutions. Furthermore, reference should be made to the crimes involving the sealing off of homes after their inhabitants had been expelled, the destruction of thousands of hectares of fruit trees, and the robbery of historical and religious monuments. His people were obliged to pay 38 different kinds of new taxes created by the Israeli occupation authorities to destabilize the economic infrastructure, which had resulted in a serious economic situation in the West Bank and a dangerous level of hunger in the Gaza Strip, according to UNRWA reports.

23. The people of the whole world had been able to witness the commission of those crimes on their television screens, a fact which had led to their condemnation. However, Israel, which had no respect for international public opinion and did not abide by international law, did not base itself in that confrontation on right or on the power of reason.

24. It based itself only on the unlimited support if received from the United States and from some European States, which had strengthened it politically, economically, financially and militarily and made it a frightening nuclear Power in the Middle East region. Negotiations were currently under way between the United States and Israel, and even between Germany and Israel, for the grant of billions of dollars in loans to help it to continue committing its crimes, thus exposing the peace process initiated in Madrid in 1991 to grave dangers.

25. In that connection, he welcomed with satisfaction recent statements by the Secretary of State of the Untied States linking loans to Israel to the halting of settlement activities, on the grounds that the question directly affected United States policies relating to the peace negotiations. It was to be hoped that that United States position would be maintained.

26. The world was deeply concerned about the deteriorating situation in the region, a concern reflected in many resolutions of the General Assembly, which had laid firm foundations for a just and permanent solution to the question of Palestine and for peace and stability in the area. The General Assembly, through the Committee on the Exercise of the Inalienable Rights of the Palestinian People had gone further and adopted resolutions defining mechanisms for arriving at that solution, which had as its basis enabling of the Palestinian people to exercise their inalienable right, including the right to self-determination, on their national soil. That had met with an Israeli rejection and a United States veto.

27. Nevertheless, the PLO was keen to deal positively with all international initiatives to achieve peace in the area. Its Palestine National Council had adopted a Palestinian peace initiative at Algiers in 1988 which he had declared in the name of the Palestinian people in December of the same year at the General Assembly session held at Geneva. That expressed his people's commitment to a just and peaceful resolution of the Arab-Israeli conflict. On those grounds, he had welcomed and dealt positively with the ten-point Egyptian peace initiative and with the Secretary of State's five points. However, unfortunately, the Palestinians had been taken aback by the suspension of the United States-Palestinian dialogue, on the one hand, and by the Israeli rejection of those initiatives, on the other. The Gulf crisis had been followed by the Gulf war and its consequences remained. The Palestinian people had been the greatest losers in that war, either because of what had befallen their community in Kuwait or because of the major losses incurred therefrom.

28. Nevertheless, they had welcomed the initiative declared by President Bush on 6 March 1991 before the joint session of the United States Congress. The Palestinians and their Arab brothers had reacted positively to the efforts made by Mr. Baker during his visit to the area. It was clear to everyone that they had thus facilitated Mr. Baker's efforts despite Israeli intransigence and rejectionism and United States partiality to, and accommodation of, Israel. At its most recent session in Algiers, the Palestine National Council had adopted a positive and significant decision which had facilitated the holding of the peace negotiations at Madrid, Washington and, most recently, in Moscow on both bilateral and multilateral levels.

29. He wished to put the following question to international public opinion, namely whether any party had the right to impose the names of the other negotiating team, as was being done through the United States-supported Israel veto on the members of the Palestinian delegation to those negotiations. That had never been done in the case of any previous negotiations in history.

30. The process of negotiations and political settlement initiated by the co-chairmen of the peace conference, the United States of America and the Russian Federation, with the participation of 35 States, including most Arab States, had reached a critical stage. The bilateral negotiations were going

round and round in the whirlpool of Israeli obstacles and had not advanced a single step towards the essentials, while the multilateral conference had begun work in Moscow in the absence of the main parties to the conflict as well as the United Nations.

31. The failures afflicting the peace process had not been unexpected when account was taken of the continued Israeli practices against his people, Israel's continued occupation of their land, its violations of international resolutions and agreements and the conditions it had attempted to impose at both levels of the negotiations. Those were unilateral conditions concerning the purely Israeli standpoint on the peace process and were not shared by any other party because they maintained the current explosive situation.

32. Israel, having occupied the land by military force and aggression, considered that the land belonged to it and that it had the right to establish settlements and to set up military projects by force of arms. At the same time, Israel wanted a peace which ensured land, peace and security for itself alone, without offering anything in return or even expressing a willingness to withdraw from the territories it had occupied by military means.

33. Israel sought to use elections, and in particular the forthcoming United States presidential elections, to gain time in order to escape from the peace process and to evade the provisions set out in President Bush's peace initiative stipulating land for peace and applying the Security Council resolutions, respect for the legitimate rights of the Palestinian people in accordance with international legitimacy, and peace and security for all in the area.

34. The Palestine Liberation Organization wished to make it known to the Government of Israel that it rejected such attempts to cause the failure of the peaceful political settlement, as did all peace- and freedom-loving peoples. The Palestinians were committed to a real peace based on justice, international legitimacy and international resolutions. They stood united both outside the homeland in the diaspora and inside the homeland, in Palestine and Jerusalem.

35. The PLO had decided to take a favourable approach to the peaceful political settlement process, which had begun at Madrid in 1991, basing that approach on the necessity of arriving at a just and comprehensive solution to the conflict. Any transitional period, which must be of limited duration and under international protection and supervision, should ensure that the Palestinian people were able to exercise their right to self-determination and to hold fair elections with impunity. In that regard, a solution based on the Namibia model would be appropriate for the realization of the Palestinian people's freedom, independence and sovereignty, the aim being to establish a Jordanian-Palestinian Confederation based on the free choice of the two fraternal peoples.

36. The national rights of the Palestinian people were sacred rights, as were those of all the peoples in the world. Because those rights had been violated and ignored, destructive wars had plagued the Middle East region. When the Palestinians regained their rights, peace would prevail. War started in Palestine, and in Palestine peace began. All efforts should converge on a

peace based on righteousness and justice, and the world might witness the day when it would live free from the spectre of war, destruction and death. The Palestinian people loved peace, and their struggle for decades had been to achieve peace in their own land.

The meeting was suspended at 12.15 p.m. and resumed at 12.35 p.m.

37. Mr. Ennaceur (Tunisia) took the Chair.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1 and 66; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29 and 30 and Add.1-4; A/46/46, 618 and Corr.1 and 703; A/C.5/46/4; A/Res/46/110)

38. Mr. NOWAK (Austria) said that, despite the remarkable progress made in fighting torture in a number of countries during the previous decade, progress towards its eradication had been far too slow. Governments must scrupulously implement their international obligations by adopting effective domestic guarantees for both the repression and prevention of torture and the international community must take stronger action against those Governments which allowed or encouraged the practice. More effective use should be made of existing international legal standards and procedures against torture and follow-up measures should be adopted to decisions and recommendations of the respective monitoring bodies.

39. More than seven years after its adoption, only 64 States had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the most important international legal standard outlawing torture. Only 28 States, mainly in Europe, had accepted the competence of the Committee against Torture to examine individual and State communications, while a further 7 States continued to uphold their reservations to the inquiry procedure under article 20. As for the Committee against Torture, the results of its monitoring procedures applied over the previous four years had not been particularly encouraging.

40. Almost half of the 65 States mentioned in the latest report of the Special Rapporteur on questions relevant to torture (E/CN.4/1992/17) were parties to the Convention, thus proving that the recourse to the Special Rapporteur provided a useful remedy even with respect to States that had ratified the Convention. Urgent appeals by the Special Rapporteur

undoubtedly yielded much faster results than the comparatively slow procedures of the Committee against Torture, but he had doubts as to the efficiency of the thematic procedures applied by the Special Rapporteur. It was essential not to forget the immense individual suffering on which the information collected in the Special Rapporteur's annual reports was based. The Special Rapporteur should be authorized to initiate visits to countries accused of torture, to report on the reactions of the Governments concerned and, where on-the-spot investigations had been carried out, to press for appropriate follow-up measures.

41. Torture could be eradicated only by efficient preventive measures and, since most cases of torture occurred within the first few days of detention, effective guarantees should be provided against arbitrary detention. Any investigation of allegations of arbitrary detention should be of an adversarial nature and, on the basis of all the data compiled, the Working Group on Arbitrary Detention should decide whether the arbitrary nature of the detention was established and should make appropriate recommendations to the Governments concerned. The right to habeas corpus must be regarded as another important means of preventing torture and ill-treatment during detention.

42. The Special Rapporteur had stressed the importance of a system of periodic visits to places of detention by independent experts as one of the most efficient guarantees against the occurrence of torture. In that connection, the Commission should carefully examine the Costa Rican proposal for the establishment of a universal system of preventive visits in the form of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The emergency mechanism of the Commission, proposed by the Austrian Secretary-General for Foreign Affairs, was also of particular importance in that regard.

43. Mr. GRILLO (Colombia) said that the elaboration of a new Constitution by the National Constituent Assembly had been a civic and political process without parallel in the constitutional history of his country. It had paved the way for institutional change and created greater awareness throughout society of the need to overcome the dialectic of violence.

44. Since the adoption of the new Constitution on 5 July 1991, the state of emergency had been lifted and democracy restored. Such limitations on freedom as still existed were a response to the violence rooted in situations which had not yet been resolved through dialogue. The Constitution guaranteed the fundamental rights and freedoms contained in the International Covenants on Human Rights. The right to life was considered inviolable and, in its article 12, the Constitution provided that no one should be subjected to enforced disappearance, torture, or other forms of cruel, inhuman or degrading treatment or punishment.

45. As a further protection of the dignity of the individual, Decree No. 3 of 1990 provided for the appointment of a municipal official to defend the human rights of individuals within his jurisdiction. That official was empowered to request such information as he considered necessary for the investigation of human rights violations and every public official who detained or otherwise limited the freedom of citizens was required to notify

the municipal official of his action, the place of the occurrence and the reason therefor, within 24 hours of its taking place. Failure to fulfil that obligation was punishable by dismissal.

46. The efforts of his Government to establish a culture of human rights had been manifested in legal and administrative institutions which were truly national in character, thanks to the establishment of specialized mechanisms at the national and municipal levels. The new Constitution had provided the necessary foundation for consolidating the national system for the defence, protection and promotion of human rights in the country.

47. It prescribed the right of habeas corpus (art. 30), requiring the judicial authority to determine the legal status of the detainee within 36 hours, and the right of all persons to demand from the courts the immediate protection of their basic constitutional rights whenever they were threatened by the action or omission of any public authority. His Government also sought to improve the human rights situation by combating violence and creating conditions for the reintegration of members of insurgent movements into society. In that context, his Government appreciated the help provided by the Government of Venezuela, where a dialogue for peace in Colombia was being conducted.

48. With the new political structure, Colombia would not allow violence to become a national epidemic. His Government and Colombian society generally were determined to restore peace, democracy and the realization of all human rights. It was important, however, to strengthen the awareness of Colombians of the need to respect the human rights set forth in the Constitution.

49. The draft Declaration on the protection of all persons from enforced disappearance (E/CN.4/1992/19/Rev.1) would enable the international community to combat that practice. In connection with article 20, paragraphs 1 and 2, of the draft Declaration, which focused on a review of the adoption of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, such adoptions should be automatically annulled if the consent of the closest relatives was not explicitly given, and annulment should remain possible, though not automatic, if further relevant information emerged. The wording of paragraph 2 seemed somewhat ambiguous in that regard.

50. His delegation attached great importance to the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It took the view, however, that only a meeting of the States parties to the Convention was competent to approve the draft protocol, and it should be the task of the Committee against Torture to prepare it. The efforts of the Commission in that area were perhaps redundant.

51. His delegation welcomed the report of the Working Group on Arbitrary Detention (E/CN.4/1992/20). It would appear to emerge from paragraphs 12 and 13 of that report (Methods of Work) that all communications were admissible, and his delegation wondered, therefore, whether the Working Group was essentially humanitarian in nature or jurisdictional. The principles adopted for identifying situations that were to be regarded as arbitrary

detention appeared well-founded. All in all, the Working Group on Arbitrary Detention had shown that it would be guided in its efforts by a desire to maintain a universal, and not a selective, monitoring of respect for human rights.

52. His Government welcomed the report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1991/30) and agreed with its conclusions, which pointed to the need for better guarantees of the independence of judges and lawyers. The legal profession must be given greater attention, so that it could continue to administer justice, which was the fundamental pillar of democracy.

53. Mr. BROTODININGRAT (Indonesia) said that, as far as his country was concerned, the philosophy of the State, its Constitution and national legislation all strictly prohibited the practice of torture as a means of extorting information or evidence.

54. The importance that his Government attached to the problem of torture had been concretely manifested by its decision to invite the Special Rapporteur on the question of torture to visit Indonesia. It had sincerely hoped to be able to learn and benefit from such a visit in order to minimize, if not eradicate, the practice of torture in Indonesia. The visit had taken place from 3 to 16 November 1991, and the report was before the Commission (E/CN.4/1992/17/Add.1).

55. His delegation had examined the report with keen interest, and sincerely appreciated the Special Rapporteur's efforts to produce a critical analysis and to arrive at recommendations. It must be regarded as perfectly normal that, in the course of such an exercise, there should be both common ground and areas of honest disagreement.

56. There were some aspects of the report, however, which his delegation found inappropriate and indeed improper. He trusted that the Special Rapporteur would take his delegation's observations in the same positive spirit as his Government had accepted the report.

57. His delegation was encouraged by the findings in the report to the effect that basic human rights, including the right to physical and mental integrity, were indeed guaranteed in Indonesia's Constitution and legislation. There was also a gratifying recognition of the fact that Indonesia was steadily improving its legal structure, although his Government agreed with the Special Rapporteur as to the need to speed up the process of ratifying, and acceding to, a number of the international human rights instruments, and it had established a working group to study ways and means of achieving that end. It also agreed with the Special Rapporteur's view that a national commission on human rights should be set up.

58. Nevertheless, his delegation detected some shortcomings in the Special Rapporteur's conclusions. They were partly due to his failure to recognize that Indonesia had hundreds of legal-aid institutions affiliated to universities, law schools and other social organizations. With regard to the machinery for complaints, the Special Rapporteur had not given due credit to the internal control mechanisms operating within each public body, nor did he

take into account the extent to which officials who abused their powers were prosecuted and punished, or the newly instituted Administrative Court. Such oversights probably stemmed from the lack of time available to him.

59. Other aspects of the report were, however, unacceptable to his delegation. In particular, he wondered why, although dated 8 January 1992, the report had not actually been made available to delegations until 28 January, despite the appearance of quotations from the report in a Dutch newspaper on 25 and 27 January. The second problem was the allegation in the report of violations of freedoms of expression and association: such rights were a separate topic, outside the mandate of the Special Rapporteur on the question of torture. Furthermore, such unsubstantiated allegations merely reduced the value of the report.

60. The most serious problem, however, related to the Dili incident on 12 November 1991. Although it was not within his mandate, it was perhaps inevitable that the Special Rapporteur should mention the incident, since it coincided with his presence in Indonesia. The problem was rather that a certain delegation, that of Portugal, had availed itself of that reference to level its familiar accusations against Indonesia. Indeed, the representative of Portugal had dedicated almost his entire statement to the Commission under the item to East Timor, trying to link the issues of human rights violations with what he had termed the denial of the right to self-determination.

61. Such references did not represent a genuine concern for human rights, but rather an obvious attempt to cover up Portugal's own infamous record as the former colonial master of East Timor for over 400 years. It was a historical fact that Portugal had irresponsibly abandoned the territory in August 1975 on the verge of a civil war which it had itself instigated. It was against that background that the overwhelming majority of the people of East Timor had long since exercised their right to self-determination by opting for integration with Indonesia.

62. His Government had never denied that the Dili incident had actually occurred and it did not consider itself as having been free from error in the matter: it had even formally expressed, at the highest level, its sincere regret over the incident, and the unfortunate loss of lives that had resulted. However, it had immediately taken the necessary measures to redress the situation and to implement the recommendation of the National Commission of Enquiry that all those involved in the incident and suspected of having violated the law should be brought to justice. The process would continue to be pursued. The Indonesian Government was also cooperating with the Special Envoy of the Secretary-General, Mr. Amos Wako, who was currently in Indonesia to investigate the incident.

63. Like other tragic events that had occurred in Indonesian history, the Dili incident had been a painful one, and the country was at the vulnerable stage of healing its wounds. His delegation thought it legitimate to expect understanding and cooperation from the Commission in such a difficult period. What was least required was an acrimonious statement, such as that of the Portuguese delegation, which was deliberately intended to keep those wounds open.

64. Mr. MARKIDES (Cyprus), speaking in exercise of the right of reply, said that the observer for Turkey, in his statement to the Commission the previous day, had shown himself unmoved by the immensity of the tragedy that had taken place in Cyprus, and had sought to politicize the issue in an attempt to deflect attention from the humanitarian aspects of the problem.

65. As early as 1976, the reports of the Council of Europe had drawn attention to grave violations of human rights in Cyprus following the Turkish invasion of 1974 with particular regard to the fate of the persons held in Turkish custody. The failure of the Turkish Government to account for those persons had brought untold suffering to their families, who were entitled to be informed of their whereabouts if they were alive. In that regard, the observer for Turkey had presented false statistics and had misrepresented the events preceding the Turkish invasion.

66. Mr. ERKMENOGLU (Observer for Turkey), speaking in exercise of the right of reply, said that the representative of Cyprus was continuing to make baseless allegations against Turkey, thus demonstrating his disregard for the Tripartite Committee on Missing Persons which was working in Cyprus, under the auspices of the Secretary-General, to resolve the problem.

67. Mr. MARKIDES (Cyprus), speaking in exercise of the right of reply, said that his delegation's concern was purely humanitarian and that Cyprus hoped that a solution would be found as soon as possible. The observer for Turkey was merely seeking to divert attention from his country's grave responsibility in respect of the missing persons, a responsibility clearly confirmed by the reports of the Council of Europe.

68. Mr. ELKARIB (Sudan), speaking in exercise of the right of reply, said that certain allegations had been made regarding human rights abuses in his country. It should be pointed out that, since coming into office, his Government had clearly stated its intention of cooperating with the Commission, the Centre for Human Rights and other United Nations bodies in respect of such violations.

69. The report by the Centre for Human Rights on a joint mission to investigate the situation of detainees in Sudan showed that the authorities had extended their full cooperation. The Government of Sudan has also convened a conference in March 1991 to discuss the rights of detainees, and in particular their right to a fair trial, and had declared its willingness to avail itself of the advisory services provided by the Centre for Human Rights.

70. With regard to the report of the Special Rapporteur on questions relevant to torture (A/CN.4/1992/17), he said that the report seemed to indicate that, in three cases drawn to its attention, his Government had been dilatory in its replies. In fact, replies had been sent to the Special Rapporteur in good time before the publication of his report.

71. In connection with the comments made by the representative of the Union of Arab Lawyers, he wished to point out that article 4 of the Covenant on Civil and Political Rights entitled States Parties to take measures derogating from their obligations under the Covenant in time of public emergency. In fact, United Nations Headquarters had been informed of the measures his

Government had adopted. The representative of that NGO had also claimed that a curfew was in force in Khartoum from 8 p.m. onwards: that was not true - the curfew applied only from midnight, and its effect had been to give the inhabitants of the capital a greater sense of security than they had enjoyed for many years.

72. In conclusion, he reiterated that his Government was ready to receive any international mission of inquiry to investigate violations of human rights in Sudan, including the rights of detainees.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-THIRD SESSION (agenda item 17) (E/CN.4/1992/2, 45, 46 and 47; E/CN.4/Sub.2/1991/5; E/CN.4/Sub.2/1991/SR.14; A/46/543)

73. Mr. JOINET (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), introducing the report of the Sub-Commission (E/CN.4/1992/2), said that he wished to concentrate exclusively on the reform of the Sub-Commission's working methods.

74. The process of reform could be divided into three stages. During the first stage, in August 1990, the Sub-Commission had made a diagnosis of its methods of work. Taking note of such obstacles to its efficient functioning as the multiform nature of interventions, the Sub-Commission had, for the first time, established a sessional working group to prepare a comprehensive balance sheet on the results of its work. Consultations had also taken place with the representatives of Governments and with the NGOs, the latter through their Liaison Committee.

75. Moreover, the Human Rights Committee had adopted a resolution inviting its Chairman and the Chairman of the Sub-Commission to prepare for the following session of the Sub-Commission, in August 1991, on the basis of a working document and intersessional consultations. At its forty-second session, therefore, the work of the Sub-Commission had benefited greatly from the thorough preparatory work undertaken.

76. During the second stage, in August 1991, the Sub-Commission had been driven by the twin imperatives of reform and improved coordination. Moved to a greater sense of urgency by rumours that a certain governmental delegation might advocate the abolition of the Sub-Commission because of criticisms of its methods of work and its alleged usurpation of the work of other human rights bodies, including the Human Rights Committee, the Sub-Commission had immediately proceeded to demonstrate its willingness to undertake reform and to improve coordination with the other related bodies.

77. Measures had been proposed to save time and to facilitate more constructive debates, while a private meeting had been held with the Chairman of the Commission to discuss criticisms of the lack of independence of certain experts and the excessive number of studies prepared. It should be noted, of course, in that connection, that it was the Commission which elected the experts and requested the studies. It was the hope of the Sub-Commission that such constructive meetings with the Commission could become institutionalized. Coordinating meetings had also been held with the Committee on the Elimination of Racial Discrimination and with the Chairman of the Human Rights Committee.

78. The third stage, in August 1992, would be the stage of practical decisions. He and his colleagues considered that the Chairman of the Sub-Commission should be invited annually to participate in the post-session discussions of the Bureau of the Commission in order to put an end to the current situation in which he merely presented his report without any possibility of subsequent discussion on the subject. In addition, the Sub-Commission wished to propose that the Commission establish an intersessional working group to put an end to the vicious circle of recommendations, proposals and suggestions that remained dead letters by preparing a set of draft decisions for consideration by the Sub-Commission in August 1992.

The meeting rose at 1.05 p.m.